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THE MASSACHUSETTS LAWS AND COMMISSION OF PUBLIC RECORDS

A PAPER PREPARED FOR THE
INTERNATIONAL CONGRESS OF ARCHIVISTS
AT BRUSSELS, AUGUST 1910

BY
HENRY ERNEST WOODS
COMMISSIONER OF PUBLIC RECORDS OF MASSACHUSETTS
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THE MASSACHUSETTS LAWS AND COMMISSION OF PUBLIC RECORDS

MASSACHUSETTS was the first one of the United States of America to enact laws concerning public records, and to create a commissioner with power to enforce such laws.

In the year 1639, by an act of the General Court of the Massachusetts Bay Colony, it was "ordered and declared, that henceforward, every judgment, with all the evidence, be recorded in a book, to be kept to posterity. Item, that there be records kept of all wills, administrations, and inventories; as also of the days of every marriage, birth, and death of every person within the jurisdiction. Item, to record all men's houses and lands, being certified under the hands of the men of every town, deputed for the ordering of their affairs."

It was not until after Massachusetts had become a State, however, in the legislative session of 1811–12, that acts were passed requiring fireproof protection to be provided for any records, and then only for records of the county courts, registries of deeds, and registries of probate, in the form of rooms "of stone or bricks," to be built at the expense of the respective counties. The scope of fireproof protection was enlarged, by an act in 1857, to cover public records in the cities and towns, they being required to provide safes for all books and papers of record or registry.

Writing paper of inferior quality was coming so much into use early in the nineteenth century, and was proving so serious a matter, that action was taken in the session of 1815–16 requiring that "from and after the first day of May next [1816] all matters which are to be entered of record in any office of Public Record . . shall be so entered or recorded on paper made wholly of linen of firm texture well glazed and well finished," clerks and registers being directed "to give a preference . . to linen paper of American or domestic manufacture."

No law concerning records was made with any penalties for violation, until 1851, when a general act obliged counties, cities and towns to provide "a suitable place for the safe keeping and preservation of the public records and other valuable documents, where they shall be deposited and securely kept"; to keep all books properly bound and arranged convenient for use; to make copies of all

records becoming worn, mutilated, or illegible; to see that records were with their proper custodians, and not removed from them; to have all records open to public inspection, and any person mutilating them to be punished; and to deposit the records of all extinct churches with the clerk of the city or town in which the church was located; but the penalties were not large, and there was no one to enforce them, so that little was accomplished.

In 1884, upon the petition of a number of prominent men of the State, the legislature passed a resolve authorizing the governor and council "to appoint a suitable person, who shall serve without compensation, to report to the next legislature upon the condition of all public records of the parishes, towns and counties of this Commonwealth." The governor selected the late Carroll Davidson Wright, Ph.D., LL.D., then chief of the Massachusetts Bureau of Statistics of Labor, afterwards United States Commissioner of Labor, and President of Clark College, Massachusetts, and work was commenced the next year, information being procured from the various officials by the enumerators sent out to take the State decennial census. A further resolve in 1889, in which year the report of the commissioner appointed in 1884 was printed and issued, extended the commission for three years, with an annual allowance for salary and expenses of a sum not to exceed four thousand dollars, and the commissioner was instructed "to take such action as may be necessary in order to complete the work begun . . and to put the public records of the parishes, towns and counties of the Commonwealth in the custody and condition contemplated by the various laws relating to such records, and in order to secure their preservation." Colonel Wright having resigned the office, to take up his duties at Washington, the secretary of the commission, Robert Thaxter Swan, Esq., was appointed commissioner; and when, in 1892, a legislative act made the commission a permanent one, and established the duties, salary and expenses of the office, Mr. Swan was reappointed. On the death of Mr. Swan, in 1907, the present commissioner was appointed.

Some years ago Mr. Swan prepared a paper upon his experiences, in which he stated that, when work was begun, it was the exception where a town or a city had adequate protection for its records, many not making even the slightest pretence towards it. Investigation showed that where provision had been made for the safety of current records, none had been made for the older ones. Many county

buildings, where so-called fireproof construction had been relied upon, were not fireproof; and if buildings had been constructed with fireproof rooms, the rooms had been fitted with highly combustible wooden fittings. Files of papers had been stored in out-of-the-way places where they had been eaten by mice, or in cellars where they had rotted from dampness. The town clerk was often the keeper of a country store for general merchandise, carrying a miscellaneous stock including gunpowder, oils, alcohol, and other highly inflammable goods. Kept among this merchandise were the ancient records, in all stages of dilapidation. If by chance the clerk had a safe, it was usually an old one, insufficient in size to hold all the records, and often not fireproof. Many of the recording officers desired better conditions, but they were powerless to improve them.

The founding, about this period, of several patriotic societies based upon descent from ancestors who had done civil or military service in colonial and provincial times stimulated genealogical research and aroused much interest and action towards improvement in the preservation of old records. Attention was particularly called to fading ink in the records; and through the efforts of the commissioner an act was passed in 1894 establishing a State standard ink and making its use compulsory, the formula of the ink being the same as that now adopted by the United States Treasury Department. At first the distribution was placed with the secretary of the Commonwealth, but in 1899 it was transferred to the commissioner of public records, at which time the use of typewriting machines for public records was legalized, but with the provision that no ink, ribbon or pad was to be used "except such as is approved by the commissioner."

In 1897 there was a further revision and codification of the laws, clearly defining "public records" for the first time, and leaving no doubt as to what should, and should not, be preserved. In addition to previous requirements, no record papers of any kind were to be destroyed without the written approval of the commissioner; every public board or commission was obliged to designate some person as clerk who was to have charge of the writing and keeping of its records; every department of the Commonwealth, and of every county, city and town, must provide and maintain either fireproof rooms, safes, or vaults for the safe-keeping of records, and only non-combustible fittings could be put in the rooms; and a maximum fine of five hundred dollars was fixed for every violation of the law,

besides a fine of twenty dollars per month upon every official neglecting or refusing to comply with the law, — which penalties have since proved sufficient to enforce the statutes. A further codification in 1902 (see Revised Laws, Chapter 35) embraces all the laws that are in operation to-day.

The most important work of the commissioner next to securing the records from danger by fire is that of having them repaired and rebound. The so-called "Emery process," by which worn, mutilated or decaying leaves of paper are put between very thin films of silk or other tissue and then fastened, making a transparent covering, was early brought to the attention of the commissioner, and has since been in general use throughout the State for preserving public records. Almost all rebinding has been done in canvas, it having been learned that books so bound will withstand great heat, while leather binding will melt and cause additional injury. An act passed in 1898 gives the commissioner the power to expend, out of the State appropriation for his office, such amount as he considers necessary for repairing and rebinding books for towns that are too poor to apply money for such purpose, and the act has been of great benefit.

To sum up the results of the commission in Massachusetts, they have been:

The erecting of many new and fireproof buildings, the remodelling of old ones to contain fireproof recepticles, and the purchase of fireproof safes, so that every county, city and town, with a few exceptions where necessary changes are now under consideration, has its principal records protected against loss by fire.

The repairing and rebinding, and consequent preservation, of many of the formerly decaying and mutilated records.

The recording on durable paper, with ink that will not fade, of public records throughout all offices.

The bringing of the records into prominence, and making them of the importance with which they ought to be regarded.

As long as records continue to increase and multiply, necessitating additional provision to be made for them, and as long as the recording officials change from time to time and need instruction and supervision, there will be work for the commissioner.